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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/461,537	12/15/1999	JOHN C. ROYER	4216.260-US	3928
25907	7590	04/19/2004	EXAMINER	
NOVOZYMES BIOTECH, INC. - 1445 DREW AVE DAVIS, CA 95616			MARVICH, MARIA	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

8M.

Advisory Action

Application No.

09/461,537

Applicant(s)

ROYER ET AL.

Examiner

Maria B Marvich, PhD

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 27-28.

Claim(s) withdrawn from consideration: _____.

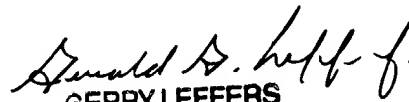
8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: the amendment does not overcome the rejection under 35 USC 112, first paragraph.

Continuation of 10. Other: Applicants traverse the claim rejections under 35 U.S.C. 112, first paragraph, on pages 3-5 of the amendment filed 3/5/04. Applicant argues that the *Fusarium venenatum* cells deposited at ATCC with deposit #20334 are known and readily available based upon arguments made in the amendment of October 24, 2002.

Applicant's arguments filed 10/29/02 (or the amendment of 10/24/02) have been fully considered but they are not persuasive. Applicants do not recite any *Fusarium venenatum* cell. Rather applicants recite specifically *Fusarium venenatum* cells deposited at ATCC under #20334. AS APPLICANTS HAVE NOT DEPOSITED THE CELLS THEMSELVES, COMMERCIAL AVAILABILITY CANNOT BE GUARANTEED FOR THE LIFE OF THE PATENT SHOULD THE CELLS BE WITHDRAWN FROM THE OPEN COLLECTION BY THE ORIGINAL DEPOSITORS. Public access during the term of the patent may affect the enforceability of the patent. (These arguments were also addressed in the office action filed 1/14/03 in response to the amendment and arguments filed 10/29/03).

Furthermore, to be in Sequence Compliance under 37 CFR 1.821 (c) and (e), the letter stating that the paper copy of the Sequence listing and the CRF are the same must also state that no New Matter has been added. Therefore, a new sequence listing, CRF and statement that the paper listing and CRF are the same and CONTAIN NO NEW MATTER are required.


GERRY LEFFERS
PRIMARY EXAMINER